

# ANU legislation renewal program

## Purpose

The University is an independent, self-governing institution of higher learning, authorised under its existing Act to make legislation covering a wide range of matters of particular concern to the University. These powers are to be retained and extended under its proposed new Act.

The University's statute book is its legislation taken as a whole. It provides a legal underpinning for the University's status and operations.

The statute book is built up over time and needs periodic review to ensure that it remains up-to-date and of a high quality. The coming enactment of the University's new Act makes this a particularly appropriate time for the University to review its statute book. This paper reviews the University's existing legislation and makes suggestions for renewing ANU legislation.

## Definitions

**existing Act** is the *Australian National University Act 1991* (Cwlth).

**legislation**: the University's **legislation** consists of the statutes, rules and orders made under the University's Act, and includes any legislative instruments and notifiable instruments<sup>1</sup> made those statutes, rules or orders.

**Legislation Act** is the *Legislation Act 2003* (Cwlth)<sup>2</sup>.

**proposed new Act** (or **new Act**) is a reference to the Australian National University Bill 2016 v15, dated 7 March 2016.

[Note: At the time of writing this paper the Bill was in an unsettled, draft form. The Bill is likely to change and this paper may need revision to reflect any changes.]

**statute book**: the University's **statute book** is the University's legislation taken as a whole.

**Walker review report** is the report entitled *Review of the Australian National University (ANU) Act 1991 and the governance arrangements of the ANU*, dated 12 December 2014<sup>3</sup>.

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<sup>1</sup> 'Legislative instrument' and 'notifiable instrument' are defined in the Legislation Act, s 8 and s 11.

<sup>2</sup> The Legislation Act was formerly called the *Legislative Instruments Act 2003*. It was renamed by the *Acts and Instruments (Framework Reform) Act 2015*.

<sup>3</sup> The report is available at [www.anu.edu.au](http://www.anu.edu.au)

# Introduction

1. This paper examines existing University statutes, rules and orders with a particular emphasis on assessing how, taken as forming part of a statute book, they measure against contemporary good drafting practice. A separate paper, *Legislative considerations following the new Act*, examines the University legislation needed or permitted under the proposed new Act. Improvements to the University's legislation identified in this paper are not dependant on the enactment of the new Act. Earlier implementation of them would, however, facilitate making changes to the University's legislation that will be needed for the new Act.
2. In assessing the quality of the University's existing legislation, the legislation needs to be examined both at the level of the details of individual items of legislation and also at the level of the University's legislation taken as a whole – the statute book level.
3. The University's statute book has been built up over time. During that time individual items of legislation have been reviewed, in whole or part, and have been revised as necessary. As a result, many items of legislation that have been reviewed recently are generally of a high quality and reflect contemporary good drafting practice. However, reviews of individual items of legislation are not necessarily an effective way of addressing the structural or thematic issues that can build up in an ever growing statute book over time. These structural and thematic issues arise partly because of the piecemeal way in which the statute book develops and need to be addressed by differently focused, more holistic reviews of the statute book.
4. This paper accordingly focuses particularly on the quality of the University's legislation at the statute book level. A well maintained, high quality statute book can assist in ensuring that individual items of legislation give effect to current University policy and contemporary values, can be more readily complied with, are more efficient to administer, are ideally fewer in number than may otherwise be the case, and are as accessible as possible to the entire University community. Accessible legislation is easy to find, read, understand and apply.
5. The hallmarks of a well maintained, high quality statute book include the following:
  - a) the statute book is consistently and logically structured and forms a cohesive whole – as a result linkages between individual items of legislation can be readily seen and users can readily identify where the legislation they are interested in can be found;
  - b) the statute book as a whole is up to date and reflects current University policy and contemporary values, including in the consistent use of gender neutral language;
  - c) the statute book is as simple, and as small, as possible.

6. By contrast, the following are indicators of a statute book in need of maintenance:
  - a) the statute book contains more individual items of legislation than necessary or desirable;
  - b) the statute book is fragmented, is not consistently and logically structured, and does not form a cohesive whole;
  - c) the statute book contains provisions that are out of date or do not reflect current University policy or contemporary values;
  - d) the statute book contains items of legislation or provisions that are redundant or obsolete;
  - e) the statute book contains the unnecessary repetition of technical provisions;
  - f) the statute book contains unnecessary clutter or complexity;
  - g) the statute book does not use a standard, consistent approach to the numbering or structuring of provisions or matters of format, style or expression.
7. A number of these indicators of a need for maintenance are now present in the University's statute book.
8. Some of them (for example, the lack of a standard and consistent approach to the numbering of provisions) would seem to be better progressively addressed over time as legislation is changed for policy reasons. The University's practice of replacing rather than amending legislation will enable them to be addressed for most University legislation in the near to mid-term, particularly having regard to the extent of the changes that are likely to be needed for the proposed new Act.
9. Other indicators present in the University's statute book would seem to require a range of different approaches to address them in an effective way, to ensure that the University's legislation forms a well maintained, high quality statute book.

## **Too many statutes: fragmentation and lack coherence**

### **(a) General**

10. One overwhelming impression of the University's statute book is that there are too many statutes and that those statutes are fragmented, are not consistently and logically structured, and do not form a cohesive whole. Addressing this impression would result in a smaller and simpler statute book, which is easier to keep up to date, and easier for users to identify where matters of interest or concern to them are dealt with.

11. It is, therefore, clear that the structure and content of the existing statutes should be reviewed, ideally before the commencement of the proposed new Act, and that the statutes should be remade as necessary on a more consistent, logical basis. This should result in a substantial reduction in the number of statutes and provide a good foundation for future development of the University's statute book.
12. There are a number of areas in which a review of the structure and content of the existing statutes could usefully focus as a matter of priority.

### **(b) Statutes that largely confer rule and order-making powers**

13. First, there are a number of statutes that confer rule and order-making powers, and do little more.<sup>4</sup> These statutes have been made on a subject basis, from time to time as additional rule and order-making powers were needed, and are not organised on any discernible theme. Although their names generally give a good idea of what they are about, it can still be difficult to identify quickly where something is dealt with and, in any event, many statutes contain little that is likely to be of interest to most readers of the University's legislation. These statutes do not appear to have been reviewed on a regular basis and, as a result, some of them contain some provisions that appear to be out-of-date or otherwise in need of review.<sup>5</sup>
14. There is no reason why, as a minimum, the rule-making powers in these statutes could not be combined in a single statute and the statutes repealed.<sup>6</sup>

### **(c) Review, rationalisation and restructuring of rule and order-making powers generally**

15. Second, existing rule and order-making powers are not just fragmented, but they also appear not to be consistently and logically structured and not to have been consistently exercised. Details of the existing powers and their exercise are provided in the Schedule. Review, rationalisation and restructuring of these powers generally would seem to be highly desirable ahead of the proposed new Act.<sup>7</sup> Order-making powers will, in any event, need to be conferred by rule under the new Act<sup>8</sup> and will need to be reviewed and remade for the new Act.

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<sup>4</sup> See e.g. *Academic and Ceremonial Dress Statute 2005*, *Academic Misconduct Statute 2014*, *ANU College Governance Statute 2013*, *Appeals Statute 2014*, *Discipline Statute 2005*, *Fees Statute 2006* and *Halls of Residence Statute 2005*.

<sup>5</sup> See e.g. the comments on the *Appeals Statute 2014* in the Schedule, Part 5.1.

<sup>6</sup> Replacement rule-making powers should ideally be included in a statute that deals comprehensively with the University's governance arrangements (see paragraph 26).

<sup>7</sup> See paper *Legislative considerations following the new Act*, paragraphs 102 to 121 on the respective roles of the Council and the Vice-Chancellor under the new Act.

<sup>8</sup> See paper *Legislative considerations following the new Act*, paragraph 97.

16. The present state of rule and order-making powers appears to be attributable to the piecemeal way in which the powers developed.
17. Initially, the Council appears to have adopted the general practice of conferring rule and order-making powers on itself. However, the Vice-Chancellor was from time to time given additional rule or order-making powers under some statutes.<sup>9</sup>
18. This practice was modified by the *Vice-Chancellorship Statute 2013*. That statute left the existing rule and order-making powers in place, but conferred additional rule and order-making powers on the Vice-Chancellor for statutes listed in the statute. The listed statutes represent most, but not all, University statutes in force. Although it is not completely clear, it appears that the effect of the statute was to give the Vice-Chancellor the same rule and order-making powers that the Council has under the listed statutes.
19. Since the *Vice-Chancellorship Statute 2013* was made, most new statutes have conferred rule and order-making powers solely on the Vice-Chancellor<sup>10</sup> and most new rules and orders have been made by the Vice-Chancellor.<sup>11</sup>
20. Existing rule and order-making powers appear, therefore, to have developed over time by simply building on previously existing powers in a piecemeal way and without, it appears, consideration being given to the most appropriate overall structure and content for those powers.
21. A review of existing rule and order-making powers needs to consider not only what powers are needed for the future and how they should be structured; but equally as importantly, who should exercise the powers in the future and the way in which they have been exercised in the past. In the paper *Legislative considerations following the new Act*<sup>12</sup>, it has been suggested, by way of a clear and logical framework, that:
  - a) the Council should exercise its legislative function as the University's governing body solely by statute and not by rule or order; and
  - b) rule-making powers should, as a general rule, be conferred by the Council on the Vice-Chancellor and the Vice-Chancellor should choose who should be the maker of any orders, where needed; and
  - c) as a broad approach, matters that fall within the functions, duties and powers that the Council cannot or should not delegate should, if they are to be dealt with by legislative instrument, be dealt with by the Council by statute; and

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<sup>9</sup> See e.g. the order-making power conferred on the Vice-Chancellor under the *Academic and Ceremonial Dress Statute 2005*.

<sup>10</sup> The *Academic Board and Committees Statute 2014* and the *Residential Colleges Affiliation Statute 2013* are apparent exceptions.

<sup>11</sup> The sole exception is the *Honorary Degrees Rules 2015*.

<sup>12</sup> See paragraphs 101 to 121.

d) also as a broad approach, all other matters that are to be dealt with by legislative instrument should be dealt with by the Vice-Chancellor by rule or, if necessary, by order.

22. Such a comprehensive review would significantly raise the quality of the University's statute book and provide a good foundation for the University's statute book going forward.

#### **(d) Effect of fragmentation on role clarity**

23. Third, the fragmented way in which the functions, duties and powers of the Council, the Chancellor, the Pro-Chancellor and the Vice-Chancellor are presently dealt with makes it difficult to form a clear view of their respective roles. This affects appearances of these key components of the University. It may also affect their practical operation.

24. The proposed new Act contains fairly comprehensive provisions about the functions, duties and powers of the Council and it seems likely that they will need only limited supplementation by statute.<sup>13</sup> The new Act includes key provisions about the functions, duties and powers of the Vice-Chancellor, but will need significant supplementation by statute.<sup>14</sup> By contrast, the new Act contains few provisions about the functions, duties and powers of the Chancellor and even less on the functions, duties and powers of the Pro-Chancellor. These will need to be dealt with by statute.<sup>15</sup> Although the new Act contains more detail than the existing Act on the functions, duties and powers of the Council and Vice-Chancellor, the statutes will, therefore, continue to have an important role in spelling out details of the respective functions, duties and powers of the Council and officers of the University.

25. At present the functions, duties and powers of the Chancellor, Pro-Chancellor and Vice-Chancellor provided by statute are largely dealt with in separate statutes<sup>16</sup> supplemented by provisions scattered across other statutes (and, especially for the Vice-Chancellor, by provisions in rules and, to a limited extent, in orders). There also does not seem to be a central point in the statutes at present where the functions, duties and powers of the Council are dealt with. Rather, the functions, duties and powers of the Council need to be gleaned by reading the existing Act and the statutes as a whole. As a result, the statutes do not presently provide a clear, accessible statement of the roles of the Council and officers of the University. In addition, by dealing with their roles separately, the statutes emphasise the

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<sup>13</sup> See paper *Legislative considerations following the new Act*, paragraph 43.

<sup>14</sup> See paper *Legislative considerations following the new Act*, paragraph 35.

<sup>15</sup> See paper *Legislative considerations following the new Act*, paragraph 33.

<sup>16</sup> See *Chancellorship Statute 2012*, *Pro-Chancellorship Statute 2014* and *Vice-Chancellorship Statute 2013*.

separateness of their roles and deal only incidentally, if at all, with how their roles interact and complement each other.

26. It is therefore apparent that the statutes should be restructured to bring together as far as practicable the provisions about the respective roles of the Council and officers of the University, and that the provisions should be reviewed with a view to ensuring that they provide not only a clear statement of their separate roles but also bring out more clearly the ways in which the roles complement each other to advance the interests of the University. Ideally this could be done in a single statute that deals comprehensively with the University's governance arrangements. This statute would, as a minimum, replace the *Chancellorship Statute 2012*<sup>17</sup>, the *Council (Elections) Statute 2016*<sup>18</sup>, *Pro-Chancellorship Statute 2014*<sup>19</sup> and *Vice-Chancellorship Statute 2013*<sup>20</sup> and the statutes that largely confer rule-making powers.<sup>21</sup>

27. Role clarity may not only assist in avoiding relationship break down, but also provide a sound foundation to provide clear processes if this happens.<sup>22</sup>

## Unnecessary matters of University structure and organisation

28. Another impression of the University's statute book is that there is a substantial amount of detail about the University's internal structure and organisation, particularly in the statutes and the rules that have been made by the Council. In reviewing the University's statute book, it needs to be asked whether all of the matters of administrative detail that have been decided legislatively in the past by the Council need to continue to be decided by the Council as the University's governing authority and, if so, whether they would be better dealt with by the Council in another way for the future (e.g. by resolution). For matters that need not be decided by the Council, it should be asked whether the matters would be better dealt with by the University's Executive in a non-legislative way rather than by rule or order. This suggested approach is consistent with the Walker review report suggestion that, '(s)o far as possible, the ANU legislation should be both succinct and flexible enough to allow the Council to govern and the Executive to manage without locking the University into structures that may not be appropriate in changed circumstances.'<sup>23</sup>

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<sup>17</sup> See Schedule, Part 6.1.

<sup>18</sup> See Schedule, Part 8.1.

<sup>19</sup> See Schedule, Part 18.1.

<sup>20</sup> See Schedule, Part 24.1.

<sup>21</sup> See paragraphs 13 and 14.

<sup>22</sup> See Walker review report, page 49.

<sup>23</sup> Page 14.

29. The paper *Legislative considerations following the new Act* examines considerations for the exercise of powers under the proposed new Act in relation to the structure and organisation of the University.<sup>24</sup> These considerations are also relevant to the review of existing provisions of the University's statute book about matters of University structure and organisation.

## Review of rules and orders

### (a) General

30. Although it would be desirable to review the structure and content of the existing rules and orders, this would not generally seem to be as much of a priority and a more targeted reviews may be sufficient for the time being. A number of rules and orders have been reviewed in recent years.<sup>25</sup> Others appear to have undergone only limited review. It would also seem that the existing structure of the rules and orders may have been driven, at least to some extent, by the existing structure of the statutes and that the rules and orders could be better structured in the future once the structure of the statutes has been revised.

### (b) Remaining rules and orders made by the Council

31. However, it is apparent that any remaining rules or orders made by the Council<sup>26</sup> should be reviewed as a matter of priority with a view to ensuring that, by the time that the new Act commences, there are no remaining rules or orders made by the Council. This may involve moving some provisions from rules and orders to the statutes, because they are provisions that must or should be made by the Council by statute. Such a review would also make a substantial contribution to ensuring role clarity for the Council and Vice-Chancellor.<sup>27</sup>

### (c) Other targeted rule and order reviews

32. The Schedule identifies a number of rules and orders, and a number of issues in rules and orders, that should or could be reviewed. These include the following:

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<sup>24</sup> See paragraph 23.

<sup>25</sup> See e.g. *Coursework Awards Rule 2016*, *Higher Doctorates Rule 2015* and *Research Awards Rule 2015*.

<sup>26</sup> See *ANU College Governance Rules (No. 2) 2013*, *Convocation Rules 2005*, *Halls of Residence Rules 2005*, *Medical Leave Rules 2013*, *Honorary Degrees Rules 2015*, *Residential Colleges Affiliation Rules 2013*, *The Australian National University Endowment for Excellence Rules 2012*, *University House Rules 2012* and *University Seal Rules 2005*. There do not appear to be any remaining orders made by the Council.

<sup>27</sup> See paragraph 21.

- a) the imposition of penalties under the *Academic Misconduct Rule 2015*,<sup>28</sup> the *Discipline Rule 2015*,<sup>29</sup> the *Information Infrastructure and Services Rule 2015*<sup>30</sup>, the *Liquor Statute 2015*<sup>31</sup> and perhaps the *Medical Leave Rules 2013*;<sup>32</sup>
- b) the application of Legislation Act exemptions to the *Coursework Handbook Rules 2013* and the *Undergraduate Handbook Rules 2013* and the inclusion of the provisions of those rules into the *Coursework Awards Rule 2016*;<sup>33</sup>
- c) fees, charges and other amounts payable to the University;<sup>34</sup>
- c) the use of nominees instead of delegates.<sup>35</sup>

## Redundant legislation

33. The following statutes and rules are redundant (or will become redundant on the commencement of the new Act) and could be repealed at a convenient time:

- a) the *Convocation Statute* and the *Convocation Rules 2005*;<sup>36</sup>
- b) the *Deputy Vice-Chancellorship Statute 1991*.<sup>37</sup>

34. Repeal of redundant legislation makes it easier for University legislation to be found and maintained by reducing the amount of legislation that must be examined and kept under review.

## Interpretation legislation

35. Interpretation legislation has had a longstanding application in shortening other legislation that relies on rules of general application contained in the interpretation legislation.<sup>38</sup> Shortening legislation results in less clutter and increased simplicity. Reliance on the standard provisions of interpretation legislation simplifies legislation by dealing with matters, especially technical matters, once in the interpretation legislation and eliminating the need to include provisions about those matters in

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<sup>28</sup> See Schedule, Part 3.2.

<sup>29</sup> See Schedule, Part 10.2.

<sup>30</sup> See Schedule, Part 13.2.

<sup>31</sup> See Schedule, Part 15.1.

<sup>32</sup> See Schedule, Part 16.2.

<sup>33</sup> See Schedule, Parts 19.6 and 19.10.

<sup>34</sup> See Schedule, Part 11.1 (Fees Statute 2006).

<sup>35</sup> See Schedule, Part 3.2 (Academic Misconduct Rule 2015), Part 5.2 (Appeals Rule 2015), Part 10.2 (Discipline Rule 2015), Part 13.1 (Information Infrastructure and Services Statute 2015), Part 16.2 (Medical Leave Rules 2013), Part 19.2 (Academic Progress Rule 2015) and Part 19.4 (Assessment Rule 2015). The use of nominees rather than delegates adds to the complexity of the statute book by introducing an unnecessary concept that requires additional provisions for its legal effectiveness.

<sup>36</sup> See Schedule, Parts 7.1 and 7.2.

<sup>37</sup> See Schedule, Part 9.1. However, replacement provisions may be needed.

<sup>38</sup> See e.g. the long title to the *Acts Interpretation Act 1901* (Cwlth), which provides that it is 'An Act for the Interpretation of Acts of Parliament and for Shortening their Language'.

other items of legislation. This avoids unnecessary duplication and facilitates greater coherence in the statute book through reliance on standard provisions that apply across the statute book. Interpretation legislation can also assist keeping the statute book up to date because the benefit of amendments to its provisions apply automatically across the statute book.

36. The *Interpretation Statute (No. 2) 2013* makes provision for the interpretation and shortening of University legislation. However, the statute is somewhat dated and is limited in what it covers. For example, the statute does not include provisions about the service of notices and other documents and it is presently necessary to include separate service provisions in every item of legislation under which documents can be served.

37. The statute needs review and updating. This could be done before the commencement of the new Act and would assist in simplifying and improving the cohesiveness of the University's statute book in preparation for the new Act and into the future.<sup>39</sup>

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<sup>39</sup> Because most University is at rule and order level, it may be convenient to have at least some provisions also applying to the interpretation of rules and orders at that level.

# Schedule: Existing statutes, rules and orders

## Part 1.1 Academic and Ceremonial Dress Statute 2005

### Overview

1. This statute confers power to make rules and orders prescribing academic and ceremonial dress for the University 'and related matters'. Apart from this the statute contains only ancillary provisions.

### Rule and order-making powers

2. The statute confers power on the Council to make rules and orders. The statute also confers power on the Vice-Chancellor to make orders.
3. The *Vice-Chancellorship Statute 2013*, section 9.5 confers power on the Vice-Chancellor to make rules and orders for statutes mentioned in the table to section 9.5. The Academic and Ceremonial Dress Statute is mentioned in the table.

### Comments

4. This statute could be repealed and the Vice-Chancellor authorised by a general statute to make rules for the matters presently authorised by the statute (and other statutes with separate rule-making powers). Alternatively, the matters dealt with in the statute and its order could perhaps be dealt with in a non-legislative way (e.g. Council resolution).
5. Under the proposed new Act any order-making power needs to be conferred by rule, and not by statute. This change cannot be made under the existing Act, but will need to be made under the new Act before any order in force under statute can be amended or replaced after the new Act has commenced. Alternatively, any existing order could be remade as a rule.
6. The nature and details of the Vice-Chancellor's accountability to the Council for the exercise of rule and order-making powers needs to be settled (compare s 2.3 and s 2.4 of this statute with s 9.6 of the *Vice-Chancellorship Statute*).

## Part 1.2 Academic and Ceremonial Dress Order 2014

### Overview

1. This order was made by the Acting Vice-Chancellor.

## Part 2.1 Academic Board and Committees Statute 2014

### Overview

1. This statute establishes the Academic Board and makes provision for its constitution, functions and powers. The statute also makes some provision for the election of some members of the Academic Board.

### Rule and order-making powers

2. The statute confers power on the Council and the Vice-Chancellor to make rules. Section 6.1(i) of the statute confers a limited power on the Vice-Chancellor to make orders.
3. The *Vice-Chancellorship Statute 2013*, section 9.5 confers power on the Vice-Chancellor to make rules and orders for statutes mentioned in the table to section 9.5. The 'Australian National University Academic Board Statute' is mentioned in the table.

### Queries

4. Is this statute necessary and, if so, are all its details necessary for a statute or another legislative instrument? If so, are some of the details more appropriate for a rule made by the Vice-Chancellor rather than a statute made by the Council?

## Part 2.2 Academic Board and Committees Rule 2016

### Overview

1. This rule was made by the Vice-Chancellor.

### Comments and queries

2. Under the proposed new Act any order-making power needs to be conferred by rule, and not by statute. This change cannot be made under the existing Act, but will need to be made under the new Act before any order in force under the statute can be amended or replaced after the new Act has commenced.
3. The scope of any new order-making power needs to be reviewed. Under section 6.1(i) of the Academic Board and Committees Statute it is not completely clear from the provision that a Dean can vote but may not be elected. (The matter is presently clarified by provisions of the rule.)
4. Are there any matters in the rule that need not be dealt with legislatively? For example, are the provisions requiring the Vice-Chancellor to nominate officers of the University to provide secretarial and other support to the Academic Board, University

Research Committee and University Education Committee necessary (or appropriate) for University legislation (see s 5(7), s 12(7) and 19(7))?

## **Part 2.3 Academic Board (Election of Members) Order 2015**

### **Overview**

1. This order was made by the Vice-Chancellor.

## Part 3.1 Academic Misconduct Statute 2014

### Overview

1. This statute confers power to make rules with respect to academic misconduct by students of the University. The statute contains no other substantive provisions.

### Rule and order-making powers

2. The statute confers power on the Vice-Chancellor to make rules. The statute does not confer power to make orders.
3. The statute is not mentioned in the *Vice-Chancellorship Statute 2013*, section 9.5.
4. There is, therefore, no power to make orders for the statute.

### Comment and queries

5. This statute could be repealed and the Vice-Chancellor authorised by a general statute to make rules for the matters presently authorised by the statute (and other statutes with separate rule-making powers).
6. Are order-making powers needed for academic misconduct? Alternatively, is there any objection to the conferral of order-making powers for academic misconduct through a general order-making power?

## Part 3.2 Academic Misconduct Rule 2015

### Overview

1. This rule was made by the Vice-Chancellor.

### Comment and query

2. This rule authorises the imposition of penalties. The rule should, therefore, be reviewed to ensure that is consistent with the proposed new Act and, in particular, that penalties can only imposed for contravention of a statute, rule or order.<sup>40</sup>
3. This rule uses nominees instead of delegates (see s 36). Is this appropriate? (The use of nominees rather than delegates adds to the complexity of the statute book by introducing an unnecessary concept that requires additional provisions for its legal effectiveness).

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<sup>40</sup> See paper *Legislative considerations following the new Act*, paragraph 62.

## Part 4.1 ANU College Governance Statute 2013

### Overview

1. This statute confers power to make rules with respect to the governance of ANU Colleges, including in relation to the appointment of Deans and the delegation of their functions, duties and powers. The statute contains no other substantive provisions.

### Rule and order-making powers

2. The statute confers power on the Council to make rules. The statute does not confer power to make orders.
3. The *Vice-Chancellorship Statute 2013*, section 9.5 confers power on the Vice-Chancellor to make rules and orders for statutes mentioned in the table to section 9.5. The ANU College Governance Statute is mentioned in the table.

### Comments and query

4. This statute could be repealed and the Vice-Chancellor authorised by a general statute to make rules for the matters presently authorised by the statute (and other statutes with separate rule-making powers).
5. Under the proposed new Act any order-making power needs to be conferred by rule, and not by statute. This change cannot be made under the existing Act, but will need to be made under the new Act before orders can be made about the governance of ANU colleges.
6. The statute lists inclusively the colleges established by the Council has established. Would it be better to do this in another way so that the list can be kept up-to-date?

## Part 4.2 ANU College Governance Rules (No. 2) 2013

### Overview

1. These rules were made by the Council.

### Comment and queries

2. The rules should be reviewed and remade, as needed, by the Vice-Chancellor.
3. However, are there any matters in the rules that should be dealt with by the Council by statute or in any other way (e.g. resolution)? Also, are there any matters in the rules that need not be dealt with by the Council or by rule?

## Part 5.1 Appeals Statute 2014

### Overview

1. This statute confers power to make 'one set of rules' with respect to appeals of decisions made under the Academic Misconduct Rules, Discipline Rules, Information Infrastructure and Services Rules and Medical Leave Rules. The statute contains no other substantive provisions.

### Rule and order-making powers

2. The statute confers power on the Vice-Chancellor to make rules. The statute does not confer power to make orders.
3. The statute is not mentioned in the *Vice-Chancellorship Statute 2013*, section 9.5.
4. There is, therefore, no power to make orders for the statute.

### Comments and queries

5. This statute could be repealed and the Vice-Chancellor authorised by a general statute to make rules for the matters presently authorised by the statute (and other statutes with separate rule-making powers).
6. The statute requires the Vice-Chancellor to exercise the rule-making power by making 'one set of rules'. This requirement has not been complied with. The *Appeals Rule 2015* deals with academic misconduct and discipline appeals, the *Information Infrastructure and Services Rule 2015* deals with information infrastructure and library appeals, and the *Medical Leave Rules 2013* deal with medical leave appeals. It is strongly recommended that the requirement should be omitted as soon as possible, or otherwise adhered to.
7. The statute confers power to make rules by reference to named rules. This is not a good drafting practice and it would be better if the rule-making power were to be set by reference to the subject matter of the appeals. In fact, the names of some of the rules mentioned in the statute have changed slightly (reinforcing the view that the approach taken in this statute does not represent good drafting practice).
8. Are order-making powers needed for appeals? Alternatively, is there any objection to the conferral of order-making powers for appeals; through a general order-making power?

## Part 5.2 Appeals Rule 2015

### Overview

1. This rule was made by the Vice-Chancellor.

### Query

2. This rule uses nominees instead of delegates (see s 26). Is this appropriate? (The use of nominees rather than delegates adds to the complexity of the statute book by introducing an unnecessary concept that requires additional provisions for its legal effectiveness).

## Part 6.1 Chancellorship Statute 2012

### Overview

1. This statute is about the Chancellor. It deals with the Chancellor's tenure of office (including resignation), and requires the Chancellor to preside on ceremonial occasions at which the Chancellor is present.

### Rule and order-making powers

2. The statute does not confer power to make rules or orders.
3. The statute is not mentioned in the *Vice-Chancellorship Statute 2013*, section 9.5.
4. There is, therefore, no power to make rules or orders for the statute. This seems appropriate.

### Comments

5. This statute should be repealed and replaced by a statute that deals, among other things, with the functions, duties and powers of the Council, Chancellor, Pro-Chancellor and Vice-Chancellor. The replacement statute should also deal with terms and conditions of appointment that are not deal with in the proposed new Act.<sup>41</sup>

### Walker review report

6. The Walker review report also contains recommendations about the statute.<sup>42</sup>

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<sup>41</sup> See also paragraphs 26 and 27 and this Schedule, Part 8.1 (Council (Elections) Statute 2016), Part 18.1 (Pro-Chancellorship Statute 2014) and Part 24.1 (Vice-Chancellorship Statute 2013).

<sup>42</sup> See paper *Legislative considerations following the new Act*, Schedule, Part 1.

## Part 7.1 Convocation Statute

### Overview

1. This statute has provisions about the Convocation.

### Comment

2. The Walker review report identified the provisions of the existing Act about the convocation as provisions that are 'inactive, outdated or obsolete'.<sup>43</sup> It would seem, therefore, that the statute should be repealed.

## Part 7.2 Convocation Rules 2005

### Overview

1. These rules were made by the Council under the Convocation Statute.

### Comment

2. It would seem that the rules should also be repealed.

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<sup>43</sup> See Appendix I, page 107.

## Part 8.1 Council (Elections) Statute 2016

### Overview

1. This statute deals with the conduct of elections for elected members of the Council.

### Rule and order-making powers

2. The statute confers power on the Vice-Chancellor to make rules and orders.
3. The statute is not mentioned in the *Vice-Chancellorship Statute 2013*, section 9.5.

### Comments

4. This statute should be repealed and its provisions relocated to a broader statute; ideally a statute that deals with the composition of the Council as well as the functions, duties and powers of the Council and the Chancellor, Pro-Chancellor and Vice-Chancellor (the **officers** of the University). This statute could also deal with the terms and conditions of appointment of Council members, and officers of the University, that are not deal with in the proposed new Act. Such a statute would deal comprehensively with the University's governance arrangements.<sup>44</sup>
5. Under the proposed new Act any order-making power needs to be conferred by rule, and not by statute. This change cannot be made under the existing Act, but will need to be made under the new Act before any order in force under the statute can be amended or replaced after the new Act has commenced.

## Part 8.2 Council (Elections) Rule 2016

### Overview

1. This rule was made by the Vice-Chancellor.

## Part 8.3 Council (Elections) Order 2016

### Overview

1. This order was made by the Vice-Chancellor.

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<sup>44</sup> See also paragraphs 26 and 27 and this Schedule, Part 6.1 (Chancellorship Statute 2012), Part 18.1 (Pro-Chancellorship Statute 2014) and Part 24.1 (Vice-Chancellorship Statute 2013).

## Part 9.1 Deputy Vice-Chancellorship Statute 1991

### Overview

1. This statute deals with the appointment, duties and powers (including in relation to intellectual property), and tenure (including resignation), of a Deputy Vice-Chancellor.

### Rule and order-making powers

2. The statute confers power on the Council to make rules. The statute does not confer power to make orders.
3. The statute is not mentioned in the *Vice-Chancellorship Statute 2013*, section 9.5.
4. There is, therefore, no power to make orders for the statute and there are no existing rules.

### Comment

5. The Walker review report recommended that section 35 of the existing Act should be repealed 'on the understanding that, as chief executive officer, the Vice-Chancellor has power to make executive appointments, reporting the appointment to the Council, with Council designating by Statute those roles in respect of which it reserves the power to make appointments on the recommendation of the Vice-Chancellor.<sup>45</sup> On the basis of the recommendation, it would seem that the statute should be repealed.<sup>46</sup>

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<sup>45</sup> Recommendation 22, page 9. See also page 49.

<sup>46</sup> See also paper *Legislative considerations following the new Act*, Schedule, Part 2.

## Part 10.1 Discipline Statute 2005

### Overview

1. This statute confers power to make rules with respect to ‘the discipline of the University’. The statute contains no other substantive provisions.

### Rule and order-making powers

2. The statute confers power on the Council to make rules. The statute does not confer power to make orders.
3. The *Vice-Chancellorship Statute 2013*, section 9.5 confers power on the Vice-Chancellor to make rules and orders for statutes mentioned in the table to section 9.5. The Discipline Statute is mentioned in the table.

### Comments

4. This statute could be repealed and the Vice-Chancellor authorised by a general statute to make rules for the matters presently authorised by the statute (and other statutes with separate rule-making powers).
5. Under the proposed new Act any order-making power needs to be conferred by rule, and not by statute. This change cannot be made under the existing Act.

## Part 10.2 Discipline Rule 2015

### Overview

1. This rule was made by the Vice-Chancellor.

### Comment and query

2. This rule authorises the imposition of penalties. The rule needs, therefore, to be reviewed to ensure that is consistent with the proposed new Act and, in particular, that penalties can only imposed for contravention of a statute, rule or order.<sup>47</sup>
3. This rule uses nominees instead of delegates (see s 22). Is this appropriate? (The use of nominees rather than delegates adds to the complexity of the statute book by introducing an unnecessary concept that requires additional provisions for its legal effectiveness).

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<sup>47</sup> See paper *Legislative considerations following the new Act*, paragraph 62.

## Part 11.1 Fees Statute 2006

### Rule and order-making powers

1. The statute confers power on the Council to make rules.
2. The statute confers power on the Vice-Chancellor or a Deputy Vice-Chancellor to make orders.
3. The *Vice-Chancellorship Statute 2013*, section 9.5 confers power on the Vice-Chancellor to make rules and orders for statutes mentioned in the table to section 9.5. The Fees Statute is mentioned in the table.

### Overview

4. This statute confers power to make rules with respect to ‘the payment to the University of fees, including student contribution amounts and tuition fees’. The statute also confers power to make orders ‘determining the amounts of fees’ payable under the rules. The statute contains no other substantive provisions.

### Comments

5. This statute could be repealed and the Vice-Chancellor authorised by a general statute to make rules for the matters presently authorised by the statute (and other statutes with separate rule-making powers).
6. Under the proposed new Act any order-making power needs to be conferred by rule, and not by statute. This change cannot be made under the existing Act, but will need to be made under the new Act before any order in force under the statute can be amended or replaced after the new Act has commenced.
7. The existing rule and order-making powers about fees are narrowly expressed and need revision to take account of the broader powers that can (and, it would seem, should) be conferred under the new Act.<sup>48</sup> Any rule or order in force when the new Act commences needs to be reviewed to ensure that, among other things, the revised rule and order-making powers are used appropriately.

## Part 11.2 Fees Rule 2015

### Overview

1. This rule was made by the Vice-Chancellor.

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<sup>48</sup> See paper *Legislative considerations following the new Act*, paragraph 89.

## Part 11.3 Fees (General) Order 2016

### Overview

1. This order was made by the Vice-Chancellor.

## Part 12.1 Halls of Residence Statute 2005

### Overview

1. This statute confers power to make rules 'regulating, or providing for the regulation of, the management, good government and discipline of halls of residence established in connection with the University'. The statute contains no other substantive provisions.

### Rule and order-making powers

2. The statute confers power on the Council to make rules. The statute does not confer power to make orders.
3. The *Vice-Chancellorship Statute 2013*, section 9.5 confers power on the Vice-Chancellor to make rules and orders for statutes mentioned in the table to section 9.5. The Halls of Residence Statute is mentioned in the table.

### Comments

4. This statute could be repealed and the Vice-Chancellor authorised by a general statute to make rules for the matters presently authorised by the statute (and other statutes with separate rule-making powers).
5. Under the proposed new Act any order-making power needs to be conferred by rule, and not by statute. This change cannot be made under the existing Act.

## Part 12.2 Halls of Residence Rules 2005

### Overview

1. These rules were made by the Council.

### Comments and queries

2. The rules should be reviewed and remade, as needed, by the Vice-Chancellor.
3. However, are there any matters in the rules that should be dealt with by the Council by statute or in any other way (e.g. resolution)?
4. Also, are there any matters in the rules that need not be dealt with by the Council or by rule?
5. In any review consideration needs to be given to the exemption provided by section 8 the *Liquor Act 2010* (ACT) for the sale of liquor in a building occupied by 'a residential college affiliated with (the University) under a statute of (the University)'.

## Part 13.1 Information Infrastructure and Services Statute 2012

### Overview

1. This statute confers power to make rules and orders for carrying out or giving effect to the statute and, in particular, 'the control, management and discipline of the information infrastructure or the information services'. The power is expressed to be in addition to the powers conferred on the Council by the Discipline Statute and the Medical Leave Statute. The statute includes definitions and provisions for the appointment of nominees by the Executive Director (Administration and Planning). The statute contains no other substantive provisions.

### Rule and order-making powers

2. The statute confers power on the Council to make rules and orders.
3. The *Vice-Chancellorship Statute 2013*, section 9.5 confers power on the Vice-Chancellor to make rules and orders for statutes mentioned in the table to section 9.5. The Information Infrastructure and Services Statute is mentioned in the table.

### Comments

4. This statute could be repealed and the Vice-Chancellor authorised by a general statute to make rules for the matters presently authorised by the statute (and other statutes with separate rule-making powers).
5. Under the proposed new Act any order-making power needs to be conferred by rule, and not by statute. This change cannot be made under the existing Act, but will need to be made under the new Act before any order in force under the statute can be amended or replaced after the new Act has commenced.
6. The existing rule and order-making powers of the statute need to be reviewed and expressed more broadly and flexibly.
7. The power in the statute to appoint nominees is inappropriately placed at the statute level and should be relocated to a rule, if it is needed. However, the appropriateness of using nominees instead of delegates in University legislation needs to be reviewed. (The use of nominees rather than delegates adds to the complexity of the statute book by introducing an unnecessary concept that requires additional provisions for its legal effectiveness.)

## Part 13.2 Information Infrastructure and Services Rule 2015

### Overview

1. This rule was made by the Vice-Chancellor.

### Comments

2. This rule authorises the imposition of penalties. The rule needs, therefore, to be reviewed to ensure that it is consistent with the proposed new Act and, in particular, that penalties can only be imposed for contravention of a statute, rule or order.<sup>49</sup>
3. The rule also seems to need a general review to ensure that it is working appropriately and is sufficiently broadly and flexibly expressed to deal with technological and other developments.
4. The functions, duties and powers of the Vice-Chancellor in relation to this statute should be clarified. The functions, duties and powers of the Executive Director should be conferred on the Vice-Chancellor and delegated as appropriate, unless an alternative approach is justified.

## Part 13.3 Information Infrastructure and Services Order 2016

### Overview

1. This order was made by the Vice-Chancellor.

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<sup>49</sup> See paper *Legislative considerations following the new Act*, paragraph 62.

## Part 14.1 Interpretation Statute (No. 2) 2013

### Overview

1. This statute makes provision for the interpretation and shortening of University legislation.

### Comment

2. The statute is somewhat dated and is limited in what it covers. The statute needs review and updating.<sup>50</sup>

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<sup>50</sup> See paragraphs 35 to 37.

## Part 15.1 Liquor Statute 2015

### Overview

1. This statute makes provision for the sale, supply, purchase and consumption of liquor in certain parts of the University and the advertising of certain activities. The statute confers power to make orders and rules.

### Rule and order-making powers

2. The statute confers power on the Council to make rules.
3. The statute confers power on the Director, Facilities and Services to make orders and provides for the disallowance of orders by the Council. Under the proposed new Act all orders will be legislative instruments and will be required to be registered under the Legislation Act.
4. The *Vice-Chancellorship Statute 2013*, section 9.5 confers power on the Vice-Chancellor to make rules and orders for statutes mentioned in the table to section 9.5. The Liquor Statute is mentioned in the table.

### Comments

5. This statute would seem to need a general review, including review of its interaction with ACT law and of the provisions that need to be dealt with by statute rather than rule or order. Section 8 of the *Liquor Act 2010* (ACT) provides that the provisions of that Act relating to the sale of liquor do not apply to the sale of liquor in an exempt university building. The section defines an exempt university building to include a building occupied by the University, or a residential college affiliated with the University under a statute of the University, in which the sale of liquor is authorised by a statute of the University. The section provides offences for the sale or purchase of liquor in an exempt university building if the sale or purchase is a contravention of a University statute.
6. The functions, duties and powers of the Vice-Chancellor in relation to this statute should also be clarified. The functions, duties and powers of the Director should be conferred on the Vice-Chancellor and delegated as appropriate, unless an alternative approach is justified. In particular, it is difficult to see any justification for the conferral of general order-making powers on the Director rather than the Vice-Chancellor.
7. Under the proposed new Act any order-making power needs to be conferred by rule, and not by statute. This change cannot be made under the existing Act, but will need to be made under the new Act before any order in force under the statute can be amended or replaced after the new Act has commenced.

8. This statute appears to be relevant to the imposition of penalties. The statute needs, therefore, to be reviewed to ensure that is consistent with the proposed new Act and, in particular, that penalties can only imposed under a statute for contravention of a statute, rule or order.<sup>51</sup>
9. As part of any review, the nature and details of the Vice-Chancellor's accountability to the Council for the exercise of rule and order-making powers in relation to liquor needs to be considered (see disallowance provisions in s 13 of the statute).

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<sup>51</sup> See paper *Legislative considerations following the new Act*, paragraph 62.

## Part 16.1 Medical Leave Statute 2007

### Overview

1. This statute confers power to make rules with respect to 'enrolment of or attendance at the University by a person with a serious health condition'. The statute contains no other substantive provisions.

### Rule and order-making powers

2. The statute confers power on the Council to make rules. The statute does not confer power to make orders.
3. The *Vice-Chancellorship Statute 2013*, section 9.5 confers power on the Vice-Chancellor to make rules and orders for statutes mentioned in the table to section 9.5. The Medical Leave Statute is mentioned in the table.

### Comments

4. This statute could be repealed and the Vice-Chancellor authorised by a general statute to make rules for the matters presently authorised by the statute (and other statutes with separate rule-making powers).
5. Under the proposed new Act any order-making power needs to be conferred by rule, and not by statute. This change cannot be made under the existing Act.

## Part 16.2 Medical Leave Rules 2013

### Overview

1. These rules were made by the Council.

### Comments and queries

2. The rules should be reviewed and remade, as needed, by the Vice-Chancellor.
3. However, are there any matters in the rules that should be dealt with by the Council by statute or in any other way (e.g. resolution)?
4. Also, are there any matters in the rules that need not be dealt with by the Council or by rule?
5. These rules may be relevant to the imposition of penalties. The provisions of the rules should, therefore, to be reviewed to ensure that they are consistent with the proposed new Act and, in particular, that penalties can only imposed under a statute for contravention of a statute, rule or order.<sup>52</sup>

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<sup>52</sup> See paper *Legislative considerations following the new Act*, paragraph 62.

6. The rules use nominees instead of delegates (see s 19). Is this appropriate? (The use of nominees rather than delegates unnecessarily adds to complexity).

## Part 17.1 Parking and Traffic Statute 2015

### Overview

1. This statute deals with traffic, and the parking, stopping or leaving of vehicles, on land occupied by the University in the ACT.

### Comment

2. The statute is presently being reviewed, independent of the process contemplated in this paper. The review will take into account the provisions of the proposed new Act about parking and traffic. Because the new Act authorises the making of certain kinds provisions by statute only in relation to parking and traffic<sup>53</sup>, provisions about parking and traffic need, in practice, to continue be dealt with in a separate statute.

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<sup>53</sup> For example, provisions creating offences. See generally paper *Legislative considerations following the new Act*, paragraphs 64 to 72, 100 and 149.

## Part 18.1 Pro-Chancellorship Statute 2014

### Overview

1. This statute is about the Pro-Chancellor. It deals with the Pro-Chancellor's tenure of office (including resignation), and requires the Pro-Chancellor to preside at Council meetings, and on ceremonial occasions, if the Chancellor is not present.

### Rule and order-making powers

2. The statute does not confer power to make rules or orders.
3. The statute is not mentioned in the *Vice-Chancellorship Statute 2013*, section 9.5.
4. There is, therefore, no power to make rules or orders for the statute.  
This seems appropriate.

### Comments

5. This statute should be repealed and replaced by a statute that deals, among other things, with the functions, duties and powers of the Council, Chancellor, Pro-Chancellor and Vice-Chancellor. The replacement statute should also deal with terms and conditions of appointment that are not deal with in the proposed new Act.<sup>54</sup>
6. The Pro-Chancellor's role of presiding at Council meetings in the absence of the Chancellor is covered by section 12(2) of the existing Act and is also mentioned in the Pro-Chancellorship Statute (see s 5). It is not mentioned in the proposed new Act. The role needs to be covered by any replacement statute.

### Walker review report

7. The Walker review report has recommendations about the Chancellorship Statute that seem relevant to this statute.<sup>55</sup>

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<sup>54</sup> See also paragraphs 26 and 27 and this Schedule, Part 6.1 (Chancellorship Statute 2012), Part 8.1 (Council (Elections) Statute 2016) and Part 24.1 (Vice-Chancellorship Statute 2013).

<sup>55</sup> See paper *Legislative considerations following the new Act*, Schedule, Part 3.

## Part 19.1 Programs and Awards Statute 2013

### Overview

1. This statute confers power to make rules and orders about the following:
  - admission to candidature of applicants for programs of study or research for degrees (other than bachelor degrees), graduate diplomas and graduate certificates;
  - admission to the University and enrolment by ANU Colleges of applicants for programs of study for bachelor degrees, diplomas and certificates;
  - the requirements of programs;
  - assessments and examinations;
  - academic performance of students;
  - granting of degrees, diplomas, certificates and honours;
  - granting of scholarships.

### Rule and order-making powers

2. The statute confers power on the Council to make rules.
3. The statute confers power on a Deputy Vice-Chancellor or Associate Dean of an ANU College to make orders about matters mentioned in rules if 'specified' in those rules.
4. The statute does not confer power on the Vice-Chancellor to make rules or orders.
5. The *Vice-Chancellorship Statute 2013*, section 9.5 confers power on the Vice-Chancellor to make rules and orders for statutes mentioned in the table to section 9.5. The Programs and Awards Statute is mentioned in the table.

### Comments and query

6. This statute could be repealed and the Vice-Chancellor authorised by a general statute to make rules for the matters presently authorised by the statute (and other statutes with separate rule-making powers). Query whether order-making powers should be conferred on the Vice-Chancellor and delegated by the Vice-Chancellor as the Vice-Chancellor considers appropriate.
7. Under the proposed new Act any order-making power needs to be conferred by rule, and not by statute. This change cannot be made under the existing Act, but will need to be made under the new Act before any order in force under the statute can be amended or replaced after the new Act has commenced.

8. Section 5 of the statute provides that rules made by the Council ‘must include provisions giving a person whose candidature might be affected a right of review’. However, ‘(a) right of review ...may be granted subject to any limitations set out in the Rules’. The application of the section is not clear and should to be reviewed and clarified before it is included in any replacement statute.

## **Part 19.2 Academic Progress Rule 2015**

### **Overview**

1. This rule was made by the Vice-Chancellor.

### **Comment**

2. This rule uses nominees instead of delegates (see s 20). Is this appropriate? (The use of nominees rather than delegates adds to the complexity of the statute book by introducing an unnecessary concept that requires additional provisions for its legal effectiveness).

## **Part 19.3 Academic Progress (ANU Medical School) Order 2015**

### **Overview**

1. This order was made by the Deputy Vice-Chancellor (Academic).

### **Query**

2. Should this order be combined with the rule under which it is made?

## **Part 19.4 Assessment Rule 2015**

### **Overview**

1. This rule was made by the Vice-Chancellor.

### **Comment**

2. This rule uses nominees instead of delegates (see s 18). Is this appropriate? (The use of nominees rather than delegates adds to the complexity of the statute book by introducing an unnecessary concept that requires additional provisions for its legal effectiveness).

## **Part 19.5 Coursework Awards Rule 2016**

### **Overview**

1. This rule was made by the Vice-Chancellor.

## Part 19.6 Coursework Handbook Rules 2013

### Comment

1. These rules will need review for the proposed new Act, especially to take account of the scope of the final form of the exemptions from the Legislation Act.
2. These rules should also be reviewed with a view to the provisions of the rules being included in the *Coursework Awards Rule 2016*.

## Part 19.7 Higher Doctorates Rule 2015

### Overview

1. This rule was made by the Vice-Chancellor.

## Part 19.8 Honorary Degrees Rules 2015

### Overview

1. These rules were made by the Council.

### Comment and queries

2. The rules should be reviewed with a view to it being remade, as needed, by the Vice-Chancellor.
3. However, are there any matters in the rules that should be dealt with by the Council by statute or in any other way (e.g. resolution)?
4. Also, are there any matters in the rules that need not be dealt with by the Council or by rule?

## Part 19.9 Research Awards Rule 2015

### Overview

1. This rule was made by the Vice-Chancellor.

## Part 19.10 Undergraduate Handbook Rules 2013

### Overview

1. These rules were made by the Council.

### Comment and queries

2. The rules should be reviewed with a view to them being remade, as needed, by the Vice-Chancellor.

3. However, are there any matters in the rules that should be dealt with by the Council by statute or in any other way (e.g. resolution)?
4. Also, are there any matters in the rules that need not be dealt with by the Council or by rule?
5. The rules will also need review for the proposed new Act, especially to take account of the scope of the final form of the exemptions from the Legislation Act.
6. These rules should also be reviewed with a view to the provisions of the rules being included in the *Coursework Awards Rule 2016*.

## Part 20.1 Residential Colleges Affiliation Statute 2013

### Overview

1. This statute deals with the establishment and affiliation of residential colleges.

### Rule and order-making powers

2. The statute confers power on the Council to make rules 'for affiliated colleges'.
3. The statute also confers a power on the Vice-Chancellor to make rules 'in relation to the standard of behaviour for members, non-resident members and visitors of affiliated residential colleges'.
4. The *Vice-Chancellorship Statute 2013*, section 9.5 confers power on the Vice-Chancellor to make rules and orders for statutes mentioned in the table to section 9.5. The Residential Colleges Affiliation Statute is mentioned in the table. As a result of the Vice-Chancellorship Statute, it would seem that the Vice-Chancellor may make the rules under the statute that may be made by the Council as well as the rules that the statute authorises the Vice-Chancellor to make. This apparent confusion in roles appears to need some resolution.

### Query

5. Are there any matters in the statute that should be dealt with by rule or in another way (e.g. resolution)?

## Part 20.2 Residential Colleges Affiliation Rules 2013

### Overview

1. These rules were made by the Council.

### Comment and queries

2. The rules should be reviewed with a view to them being remade, as needed, by the Vice-Chancellor.
3. However, are there any matters in the rules that should be dealt with by the Council by statute?
4. Also, are there any matters in the rules that need not be dealt with by the Council or by rule?
5. Section 3 of the rules permits the Vice-Chancellor to incorporate draft rules into the rules as a schedule to the rules. The application of the Legislation Act to incorporated draft rules needs review.

## Part 21.1 The Australian National University Endowment for Excellence Statute 2012

### Overview

1. This statute deals with the establishment and operation of The Australian National University Endowment for Excellence, including the Board of Governors for the Endowment, the Endowment Fund, and the Foundations and their Directors.

### Rule and order-making powers

2. The statute confers power on the Council to make rules for the statute.
3. The statute does not confer power to make orders.
4. The *Vice-Chancellorship Statute 2013*, section 9.5 confers power on the Vice-Chancellor to make rules and orders for statutes mentioned in the table to section 9.5. This statute is not mentioned in the table.
5. The Vice-Chancellor may not, therefore, make rules for the statute and there is no power to make orders for the statute.

### Query

6. Are there any matters in the statute that should be dealt with by rule or in another way (e.g. resolution)?

## Part 21.2 The Australian National University Endowment for Excellence Rules 2012

### Overview

1. These rules were made by the Council.

### Queries

2. Query whether the provisions of the rules should be reviewed with a view to them being remade, as needed, by the Vice-Chancellor by rule or incorporated into the statute.
3. However, if the provisions of the rules are to be remade by the Vice-Chancellor by rule, are there any matters in the rules that should be dealt with by the Council by statute or in any other way (e.g. resolution)?
4. Also, are there any matters in the rules that need not be dealt with by the Council (by statute or in another way) or by rule made by the Vice-Chancellor?

## Part 22.1 University House Statute

### Overview

1. This statute deals with the Master and Board of Fellows of University House. The statute confers power to make rules for the statute, including in relation to a number of matters regarding University House.

### Rule and order making powers

2. The statute confers power on the Council to make rules, 'on the advice of the Board of Fellows', for the statute.
3. The statute does not confer power to make orders.
4. The *Vice-Chancellorship Statute 2013*, section 9.5 confers power on the Vice-Chancellor to make rules and orders for statutes mentioned in the table to section 9.5. The University House Statute is mentioned in the table. The Vice-Chancellorship Statute does not seem to require rules or orders to be made by the Vice-Chancellor 'on the advice of the Board of Fellows'. This apparent anomaly appears to need some resolution.

### Query

5. Are there any matters in the statute that should be dealt with by rule or in another way (e.g. resolution)?

## 22.2 University House Rules 2012

### Overview

1. These rules were made by the Council.

### Queries

2. Query whether the provisions of the rules should be reviewed with a view to them being remade, as needed, by the Vice-Chancellor by rule or incorporated into the statute.
3. However, if the provisions of the rules are to be remade by the Vice-Chancellor by rule, are there any matters in the rules that should be dealt with by the Council by statute or in any other way (e.g. resolution)?
4. Also, are there any matters in the rules that need not be dealt with by the Council (by statute or in another way) or by rule made by the Vice-Chancellor?

## Part 23.1 University Seal Statute 2002

### Overview

1. This statute is about the custody and use of the seal of the University. The statute confers power to make rules for the statute.

### Rule and order-making powers

2. The statute confers power on the Council to make rules for the statute.
3. The statute does not confer power to make orders.
4. The *Vice-Chancellorship Statute 2013*, section 9.5 confers power on the Vice-Chancellor to make rules and orders for statutes mentioned in the table to section 9.5. This statute is not mentioned in the table.
5. The Vice-Chancellor may not, therefore, make rules for the statute and there is no power to make orders for the statute.

### Comment and queries

6. This statute needs to be reviewed in the light of the provisions about the seal in the existing Act and the proposed new Act.<sup>56</sup>
7. Are there any matters in the statute that should be dealt with by rule or in another way (e.g. resolution)?
8. Does the Vice-Chancellor's role under the statute need to be reviewed? For example, could the custodian of the seal be appointed by the Vice-Chancellor rather than the Council (but see s 3 of the rules) and are the reporting arrangements to the Council appropriate?

## Part 23.2 University Seal Rules 2005

### Overview

1. These rules were made by the Council.

### Queries

2. Query whether the provisions of the rules should be reviewed with a view to them being remade, as needed, by the Vice-Chancellor by rule or incorporated into the statute.

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<sup>56</sup> See paper *Legislative considerations following the new Act*, paragraphs 80 to 83.

3. However, if the provisions of the rules are to be remade by the Vice-Chancellor by rule, are there any matters in the rules that should be dealt with by the Council by statute or in any other way (e.g. resolution)?
4. Also, are there any matters in the rules that need not be dealt with by the Council (by statute or in another way) or by rule made by the Vice-Chancellor?

## Part 24.1 Vice-Chancellorship Statute 2013

### Overview

1. This statute is about the Vice-Chancellor. It deals with the Vice-Chancellor's tenure of office (including resignation), and the Vice-Chancellor's powers and duties.

### Rule and order-making powers

2. The statute confers power on the Council to make rules, and on the Vice-Chancellor to make orders, nominating a person to exercise particular functions or powers of the Vice-Chancellor.
3. Section 9.5 also confers power on the Vice-Chancellor to make rules and orders for the statutes mentioned in the table to the subsection and for any other statute that contains 'an explicit power to do so'.
4. Section 9.6 requires the Vice-Chancellor to report to the Council, at its next meeting, on the exercise of the power to make rules or orders.

### Comments

5. This statute should be repealed and replaced by a statute that deals, among other things, with the functions, duties and powers of the Council, Chancellor, Pro-Chancellor and Vice-Chancellor. The replacement statute should also deal with terms and conditions of appointment that are not deal with in the proposed new Act.<sup>57</sup>
6. The provisions of the statute need, in any event, to be reviewed for consistency with the provisions of the proposed new Act.<sup>58</sup>
7. The accountability of the Vice-Chancellor to the Council, including for the exercise of the Vice-Chancellor's powers to make rules and orders, needs to be considered as part of any review.

### Walker review report

8. The Walker review report contains recommendations about the statute.<sup>59</sup>

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<sup>57</sup> See also paragraphs 26 and 27 and this Schedule, Part 6.1 (Chancellorship Statute 2012), Part 8.1 (Council (Elections) Statute 2106) and Part 18.1 (Pro-Chancellorship Statute 2014).

<sup>58</sup> See especially s 4 (Vice-Chancellor to be executive officer of University) and s 5 (Appointment as President).

<sup>59</sup> See paper *Legislative considerations following the new Act*, Schedule, Part 4.